

**SHIP PRODUCTION COMMITTEE
FACILITIES AND ENVIRONMENTAL EFFECTS
SURFACE PREPARATION AND COATINGS
DESIGN/PRODUCTION INTEGRATION
HUMAN RESOURCE INNOVATION
MARINE INDUSTRY STANDARDS
WELDING
INDUSTRIAL ENGINEERING
EDUCATION AND TRAINING**

July 1996
NSRP 0473

THE NATIONAL SHIPBUILDING RESEARCH PROGRAM

Regulatory Reform: Provide Shipyard Industry Recommendations to EPA

**U.S. DEPARTMENT OF THE NAVY
CARDEROCK DIVISION,
NAVAL SURFACE WARFARE CENTER**

in cooperation with
**National Steel and Shipbuilding Company
San Diego, California**

Report Documentation Page			Form Approved OMB No. 0704-0188		
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1. REPORT DATE JUL 1996	2. REPORT TYPE N/A	3. DATES COVERED -			
4. TITLE AND SUBTITLE The National Shipbuilding Research Program, Regulatory Reform: Provide Shipyard Industry Recommendations to EPA			5a. CONTRACT NUMBER		
			5b. GRANT NUMBER		
			5c. PROGRAM ELEMENT NUMBER		
6. AUTHOR(S)			5d. PROJECT NUMBER		
			5e. TASK NUMBER		
			5f. WORK UNIT NUMBER		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Surface Warfare Center CD Code 2230-Design Integration Tower Bldg 192, Room 128 9500 MacArthur Blvd Bethesda, MD 20817-5700			8. PERFORMING ORGANIZATION REPORT NUMBER		
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)			10. SPONSOR/MONITOR'S ACRONYM(S)		
			11. SPONSOR/MONITOR'S REPORT NUMBER(S)		
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF: a. REPORT unclassified			17. LIMITATION OF ABSTRACT SAR	18. NUMBER OF PAGES 52	19a. NAME OF RESPONSIBLE PERSON
b. ABSTRACT unclassified					
c. THIS PAGE unclassified					

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July 1996
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Regulatory Reform:
Provide Shipyard Industry
Recommendations to EPA

U.S. DEPARTMENT OF THE NAVY
CARDEROCK DIVISION,
NAVAL SURFACE WARFARE CENTER

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FINAL REPORT

REGULATORY REFORM: PROVIDE SHIPYARD INDUSTRY RECOMMENDATIONS TO EPA

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**In Behalf Of
SNAME SPC PANEL SP-1
on
FACILITIES AND ENVIRONMENTAL EFFECTS**

**Under the
NATIONAL SHIPBUILDING RESEARCH PROGRAM**

July 1996

**Subtask 11 Under
Task NI-92-2**

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MEMORANDUM

July 16, 1996

TO: SNAME PANEL SP-1
SHIPYARD REPRESENTATIVES

FROM: JOHN L. WITTENBORN
CATHERINE R ROBINSON

RE: REGULATORY REFORM SURVEY RESULTS

I. STATEMENT OF PURPOSE

As part of an overall regulatory reform initiative, President Clinton announced in 1995 that regulations should be flexible, allowing greater protection to society at a lower cost to the regulated industry. He indicated the Administration's receptivity to creative compliance solutions, recognizing that "command-and-control" regulations have limited effectiveness. The President also pointed out that better decisions evolve from a collaborative process in which people work together.

In response to the President's initiative, the U.S. Environmental Protection Agency ("EPA" or "the Agency") began efforts to review its various regulatory programs and its statutory mandates to develop such programs. These efforts were the catalyst for this National Shipbuilding Research Program ("NSRP") project on the subject. In the first part of this project, a regulatory reform questionnaire was sent to fourteen shipyard representatives on the SP-1 Panel,

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asking the shipyards representatives to rank the environmental issues that affect the shipbuilding industry. See Attachment 1. This report represents the second part of the NSRP regulatory reform project. The purpose of this report is to present the results of the NSRP questionnaire (Attachment 2), listing the survey participants (Attachment 3) and describing in detail their top-ranked environmental concerns. This report also summarizes their lower-ranked environmental concerns. Using the survey and this report, NSRP representatives can determine the most effective strategy for promoting NSRP's interests in promoting meaningful regulatory reform at EPA.

II. INTRODUCTION

The shipbuilding industry has demonstrated a commitment to regulatory reform of environmental statutes and regulations. By supporting streamlining efforts to make environmental protections more logical and efficient, the industry can improve the regulatory regime that governs its members. However, the shipbuilding industry cannot realistically endeavor to change every environmental statute or regulation that affects its member companies. Instead, it should identify those statutes or regulations that take precedence among its members and devote its efforts and resources to those top priorities.

The presidential election year is an opportune time for industry to focus its regulatory reform efforts. In the past several months, the Democratic and Republican parties have both formed task forces to clarify their positions on the environment. In mid-April, presumptive Republican nominee Robert Dole announced the formation of a panel of policy advisors to craft an environmental platform for his presidential campaign. Mr. Dole indicated that the key

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principles of this platform will include devolution of authority to state governments, regulatory reform, and private property rights.

Not only are the parties coalescing their environmental policies during the election year, they are also taking active steps now to rationalize regulations. For example, on March 26, President Clinton signed into law a bill that would reform the land disposal restrictions program under the Resource Conservation and Recovery Act (“RCRA”) by exempting certain wastewaters from hazardous waste regulation as long as the wastewaters are managed in facilities regulated by other environmental statutes. One publication reported, “both industry sources and EPA staff say the enactment of the legislation demonstrates the potential for positive regulatory reform when industry and the administration, and Republicans and Democrats, work together on consensus-based proposals.” Inside EPA (March 29, 1996). By signing the bill, President Clinton followed the three guidelines set forth in his regulatory reform initiative: regulatory flexibility, lower costs, and administrative cooperation.

This project, therefore, takes the timely first step toward positive regulatory reform for the shipbuilding industry. Some of the priority issues identified in this project may be resolved in NSRP’s favor without a significant investment of resources -- either because Congress or the U.S. Environmental Protection Agency (“EPA” or “the Agency”) has already committed to a certain action or because other industry groups will promote causes that are consistent with NSRP members’ positions. Other issues will require more direct involvement from NSRP.

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III. PARTICIPANTS IN QUESTIONNAIRE

To implement the project, Collier, Shannon, Rill & Scott prepared a survey form (Attachment 1) which listed twenty-four separate environmental regulatory or legislative issues that are known to impact shipyard operations. The questionnaire, along with a detailed memorandum explaining each of the issues, was sent to each shipyard representative on the SNAME SP-1 Panel. Each shipyard was asked to rank each issue on a scale of "1-5" with "1" being low priority (least important) and "5" being high priority (most important). The responses were ranked by total score and in terms of the percentage of respondents who ranked each issue as a "4" or "5". The results of the questionnaire are tabulated in Attachment 2.

Fourteen member shipyards completed the survey forms, indicating their priorities for regulatory reform. Two of these participating members were naval shipyards and one was a U.S. Coast Guard shipyard. The remaining eleven participants were private shipyards of varying sizes. A table of all fourteen shipyards is attached to this report as Attachment 3.

IV. TOP-RATED ENVIRONMENTAL REGULATORY ISSUES

A. NPDES Permit Monitoring

The environmental concern that member shipyards ranked as their top priority overall is the monitoring required under a National Pollutant Discharge Elimination System ("NPDES") permit. This concern was also ranked first in terms of percentage participants who gave this a score of either 4 or 5. NSRP has already funded a project that deals with NPDES permits; however, this project may not incorporate the scope of issues that shipyards consider necessary.

Some permit writers have interpreted NPDES requirements to require that permittees monitor all effluent guideline-listed pollutants. Such an expansive interpretation could include numerous constituents identified in the 1979 draft of EPA's effluent limitations guidelines background document for shipyard operations that are not currently subject to permit limitations and/or monitoring and reporting requirements. In addition, some permit writers are interpreting the definition of "process wastewater" very broadly, thereby incorporating some storm water flow within the scope of NPDES permit provisions dealing with process wastewater. Other shipyards may face more frequent requirements for bioassay testing as a condition of NPDES permit monitoring. The type, frequency, and protocol for such bioassay testing are not clearly developed.

Last year EPA began a comprehensive effort to revise and improve the NPDES program, partly in response to some complaints raised by the regulated community. This comprehensive effort has resulted in two Agency actions to date. First, EPA issued interim guidance in early May on performance-based reductions of monitoring requirements for the regulated community. The Agency will reportedly "reduce NPDES monitoring requirements while maintaining the same level of environmental protection." Inside EPA (May 17, 1996). Second, the Office of Water at EPA "has initiated discussions to expand the range of Clean Water Act permit modifications that would be considered 'minor' and therefore not subject to an extensive public review process." Id. Other permit implementation issues are in development.

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Although EPA has not addressed the extent of effluent guideline-listed pollutants that must be monitored, this agency activism in related areas indicates that EPA might be receptive to industry reform efforts.

B. CM Title V Operating Permit Program

The environmental concern that tied for first priority is the Title V operating permit program. However, this concern was ranked third in terms of the percentage of participants who gave this a score of either 4 or 5. NSRP has funded a project on the Title V operating permit program.

Title V of the Clean Air Act (“CAA”) and Part 70 of EPA’s air regulations require major sources of regulated air pollutants to obtain a federal operating permit. The Part 70 regulations: (1) require costly data collection and paperwork burdens; (2) create extensive delays in obtaining the initial permit and permit modifications; and (3) unnecessarily duplicate existing state requirements.

EPA has taken steps to simplify the permitting process. In July of 1995, EPA published a White Paper intended to provide permit writers with guidance on the development of Title V permit applications. The White Paper suggested that applicants may submit quantitative descriptions, rather than actual emissions estimates for non-regulated sources. It also provided guidance on treatment of insignificant sources and, importantly, included a “no look back” policy that enables industry and states to rely upon previous state permit-decisions.

On March 5, 1996, the Agency released White Paper Number 2. White Paper Number 2 is intended to provide guidance to states and industry on ways in which they can use the

permitting process to consolidate duplicative, redundant, and conflicting requirements. Sources may opt to streamline the applicable requirements by selecting the most stringent of multiple applicable emissions limitations and work practices for a specific regulated air pollutant on a particular emission unit. Compliance with the most stringent emissions limitation will ensure compliance with other limitations. The monitoring, recordkeeping, and reporting requirements associated with the most stringent limitation would be appropriate for use with the streamlined limitation. If it is difficult to determine which applicable emission standard would be the most stringent, the source may construct a single new alternative or "hybrid" emission standard which would supplant the other competing limits.

If a source violates a streamlined emission limitation in the Part 70 permit, it may be subject to an enforcement action for violation of one (or more) of the subsumed applicable emission limits. However, a source would not be subject to an enforcement action for any failure to meet monitoring, recordkeeping, and reporting requirements that are applicable to regulations subsumed by the streamlined requirement.

White Paper Number 2 addresses some, but not nearly all, of the concerns that industry has with the operating permit program. Some members of the regulated community have suggested the need for a White Paper Number 3. The industry may also be served by the development of general permits and model application language for similar sources.

C. Effluent Limits For Metal Products And Machine

Participants ranked effluent limits for metal products and machinery ("MP&M") second overall. This environmental concern was ranked third in terms of percentage participants who

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gave this a score of either 4 or 5. NSRP has approved a project dealing with effluent limits for MP&M.

EPA has proposed stringent wastewater effluent limits for manufacturers in the MP&M industries. See 60 Fed. Reg. 28209 (May 30, 1995). This proposal affects all "Phase I" MP&M industries. Shipyards have been identified as "Phase H" MP&M facilities. The proposed MP&M regulations for Phase II are scheduled to be released within the next three years; however, the Phase I effluent limitations will serve as a basis for Phase II. Also, there are reports (but no confirmation) that EPA will combine Phase I and Phase II in one comprehensive rulemaking to be issued in the next three years.

The Phase I proposed effluent limitations and standards would control conventional, priority, and non-conventional pollutants at both existing and new facilities that discharge either directly to surface waters or indirectly to publicly-owned treatment works ("POTWs"). Thus, the proposed effluent limitations would remove the existing advantage (in the form of less stringent effluent standards) for facilities that discharge to a POTW. This would be contrary to past EPA policies that many facilities may have relied upon.

EPA proposes establishing stringent concentration-based limits for oil and grease, aluminum, cadmium, chromium, copper, iron, nickel, zinc, cyanide, total suspended solids ("TSS"), and pH that reflect the Best Practicable Technology ("BPT"). Many existing facilities would not be able to meet the new limits for these pollutant parameters without significant capital expenditures.

Whether EPA decides to combine Phase I and Phase II into a comprehensive rulemaking or continue with just Phase II, the shipbuilding industry will want to comment on the proposal. It may be advantageous for the shipbuilding industry to join other industries in establishing a work group that would coordinate information dissemination to member companies and could hire an environmental consultant to compile and analyze data. This data analysis could be used in participants' comments to EPA. By working as a group, the participants could save the money and time of collecting data alone and would present a united industry front to EPA.

D. Storm Water Discharges

The storm water discharge system was ranked the third overall priority for the shipbuilding industry. The environmental concern was also ranked third in terms of the percentage of participants giving it a score of either 4 or 5. There is no NSRP project approved or funded on storm water discharge issues. NSRP has previously funded a project on shipyard Best Management Practices, including storm water runoff.

The Clean Water Act requires facilities with storm water discharges "associated with industrial activity" from a point source to a water of the United States to obtain an NPDES permit for such discharges. This includes shipyard facilities. EPA administers the NPDES program in 11 states, the District of Columbia, and Puerto Rico. The 39 other states (referred to as "delegated" states) administer their own programs, based on EPA's program. There are two permitting options in all of these jurisdictions -- individual or general permits.

Last fall, EPA promulgated its "multi-sector" general permit, covering 29 industry sectors, including the ship and boat building and repair sector. See 60 Fed. Reg. 50804 (September 29,

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1995). Facilities in the non-delegated states may now choose between an individual permit and either of two general permits: the baseline general permit (which EPA promulgated in 1992) and the new multi-sector permit. If facilities in the non-delegated states choose the multi-sector program, they should have submitted a Notice Of Intent to apply for EPA's multi-sector permit by March 29, 1996, and must prepare and implement a storm water pollution prevention plan by September 25, 1996.

Most of the delegated states provide their own individual or general permit options. Several, including the State of California, are in the process of revising or amending their general permits. Additionally, some delegated states are anticipated to promulgate a multi-sector permit that is similar to EPA's.

Finally, EPA and Congress are contemplating further changes to the storm water program. EPA has established a Federal Advisory Committee (of which Collier, Shannon, Rill & Scott, PLLC is a member) to recommend administrative improvements to the storm water program. The goal of these improvements would be to provide incentives for pollution prevention within the current statutory framework, such as providing certain permitting exemptions. Statutory changes contemplated by Congress include requiring states to develop their own storm water programs. These state programs would not have to rely on permits and would also provide businesses with incentives to undertake pollution prevention efforts.

E. Reduce Scope of EPCRA Section 313

The scope of the Emergency Planning and Community Right-to-Know Act ("EPCJRA") Section 313 was ranked the fourth overall environmental priority. However, this environmental

concern was ranked second in terms of percentage of participants who gave this a score of either 4 or 5. EPCRA reporting is the subject of two Environmental Studies and Testing subtasks and is a proposed fiscal year 1997 project.

EPA is in the process of a three-step expansion of EPCRA Section 313. In 1994, the Agency doubled the list of toxic chemicals subject to reporting. Currently, EPA is working on expanding the number of facilities subject to the law and adding chemical use reporting obligations. The chemical use reports would compel disclosure of information on manufacturing processes using a materials accounting, or mass balance approach. NSRP may want to monitor or seek to influence these efforts.

In an early May final rule, EPA raised the threshold levels for 200 hazardous substances which are required to be reported if accidentally released into the environment under EPCRA §304. See 61 Fed. Reg. 20473 (May 7, 1996). This action indicates the Agency's possible receptivity to reform other EPCRA sections, such as Section 313. However, the shipbuilding industry should not limit its regulatory reform efforts to relaxed reporting levels; it should also urge the Agency to reconsider the list of toxic chemicals subject to reporting, the list of facilities subject to the law, and the chemical use reporting obligations.

F. Environmental Audit Privilege And Disclosure Incentive

Participating shipyards ranked the environmental audit privilege their fifth overall environmental concern. The audit privilege tied for fourth in terms of percentage participants who gave this a score of either 4 or 5. There is currently no NSRP-approved or NSRP-funded project on the audit privilege.

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Although EPA encourages companies to conduct voluntary environmental compliance audits, its present policy fails to provide adequate protection against the use of audit reports in enforcement actions, citizen suits or third-party tort actions. See 60 Fed. Reg. 66706 (December 22, 1995). This policy seems irrational. Because of the burgeoning and complex regulatory regime of environmental law, regulatory agencies cannot adequately monitor compliance and correct noncompliance. The regulated entities themselves are better informed and better equipped to identify and address environmental compliance problems in their facilities. However, if regulated entities fear that any foray into such voluntary policing will result in litigation and enforcement, they will be hesitant to conduct thorough audits.

The EPA audit policy is not binding on states or private litigants. Nineteen states have passed legislation that provides an environmental audit privilege and/or immunity for voluntary disclosure.¹ Several other states have legislation that has passed at least one house of the state legislature.² Ohio is likely to be the next state to enact a statute that provides both the audit privilege and immunity provisions. These states have endorsed the public policy goal of enlisting the private sector in efforts to maintain a clean environment. NSRP members may want to provide assistance for its members to work with their state legislatures to approve an environmental audit privilege.

1/ The nineteen states with audit privilege and/or immunity legislation are Arkansas, Colorado, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia and Wyoming.

2/ The states with legislation that has passed at least one house of the legislature include Alabama, Alaska, California, North Carolina, Oklahoma, Ohio, and Tennessee.

EPA has stated its opposition to state environmental audit privilege and/or immunity laws. In some states, EPA has actively campaigned against the legislation before, during, and after its enactment. The Agency recently announced the formation of a new Audit Policy Task Force (“Task Force”) to monitor the approval of state-delegated programs in states with environmental audit privilege and immunity statutes. This layer of Agency oversight for states with audit statutes will be quite onerous for states and represents EPA’s efforts to discourage state audit privilege legislation.

Federal legislation is currently pending in both the House (H.R. 1047) and the Senate (S. 582). Shipyards may want to work with Congress to push passage of one of these bills. Without a federal audit privilege and immunity statute, the state environmental audit privileges are of little value. State audit privilege and immunity laws protect certain documents and provide penalty immunity in state legal proceedings. However, these state laws may not provide the same benefits in federal proceedings. This means that EPA can circumvent the benefits provided under state law by asserting federal claims in a federal forum for certain contested cases.

G. **Harmonization of Federal Reporting Requirements**

Harmonizing federal reporting requirements was ranked by the participating shipyard equally with environmental audit privilege as the fifth overall environmental concern. This concern also tied for fourth with environmental audits privilege for participants who ranked this a score of 4 or 5. There is currently no NSRP approved or funded project on this issue of concern.

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Existing regulations for discharge/release reporting and emergency planning requirements are often duplicative and burdensome for industry. These regulations have been promulgated under the EPCRA, CAA, CWA, and RCRA. To replace the multiple reporting forms for different discharges from a single facility, EPA has proposed to create a one-stop reporting system for the collection of routine emissions data. The Agency's Executive Steering Committee is reviewing the various options for a one-stop reporting system and is expected to make recommendations for fiscal years 1996 and 1997 soon. Ideally, EPA would reduce the excessive EPCRA reporting obligations by listing only specific chemicals that exhibit toxic characteristics instead of over broad categories of chemicals.

H. Sediment Criteria

Participating shipyards ranked sediment quality criteria their sixth overall environmental concern. Sediment quality criteria tied for fourth in terms of percentage shipyards that gave it a score of either 4 or 5. NSRP has approved a project on sediment quality criteria.

In December 1994, EPA proposed new sediment quality criteria and sediment protection policies. The criteria will specify levels of various toxic chemicals which are deemed to interfere with sediment quality goals. The criteria will affect shipyard operations that disturb sediments or that may contribute to sediment contamination. This means that virtually all storm water discharges, dredging operations, drydocking, and over water work would be regulated. Some members of the regulated community assert that establishment of sediment quality criteria could introduce an aquatic version of the Comprehensive Environmental Response, Compensation, and

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Liability Act (“CERCLA” or “Superfund”). This would be an extremely expensive and burdensome regulatory regime for the shipbuilding industry. Because of this level of controversy, sediment quality criteria is one of the top Clean Water Act priorities at EPA.

A more immediate impact of the establishment of sediment criteria is demonstrated by EPA’s early March interim draft of an advance notice of proposed rulemaking on revised water quality standards, which suggests sediment quality criteria as an analytical tool for determining revised water quality standards. Water quality standards affect many federal and state Clean Water Act activities, such as setting and revising water quality goals for watersheds and/or individual water bodies and monitoring water quality to provide information upon which water quality-based decisions will be made. Because of the broad impact of established sediment criteria, shipyards should become involved in their development to ensure that they are realistic and achievable.

V. OTHER ENVIRONMENTAL REGULATORY ISSUES

The issues described above ranked as the shipyards’ highest priorities. However, several other issues were also generally deemed to be significant for the industry. These issues, presented in order of priority, are as follows:

1. Major Source Designation Based Upon “Potential to Emit”

Section 112(a)(1) of the Clean Air Act defines a major source as one that “emits or has the potential to emit considering controls” particular pollutants above the threshold amount. The Agency defines “potential to emit” based on the maximum capacity of a source’s operational

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equipment. Physical and operational limitations are only considered to the extent that they are “federally enforceable.”

This rule mandating that limitations only be considered if federally enforceable was recently remanded by the U.S. Court of Appeals for the District of Columbia Circuit. This remand may allow NSRP member shipyards to avoid becoming major sources by using state and local limitations to calculate “potential to emit.”

On March 18, 1996, the Agency issued a pared-down federal interim air toxics program that will exclude plant modifications from applying to “potential to emit.” The interim program also grants deference to pre-existing state programs. EPA hopes to finalize the rule by December 15, 1996.

2. Redefinition of Solid Waste

Current EPA regulations allow some recycling operations to escape RCRA regulation. Other common recycling activities are defined as waste treatment per se or may otherwise require hazardous waste storage permits. Such activities are subject to the full panoply of RCRA Subtitle C requirements.

In conjunction with a group of selected states, EPA is on the verge of proposing a radical approach to the regulation of recycling. EPA and the states have developed two different approaches -- the “in commerce” option and the “transfer-based” option. Under the “in commerce” option, materials that have “positive economic value” and are legitimately recycled would be unconditionally excluded from regulation as a hazardous waste under RCRA Subtitle C. Under the “transfer-based” option, materials that are legitimately recycled “on-site” would be

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exempt from regulation as a hazardous waste under RCRA Subtitle C, provided that the materials are not discarded. Materials that are recycled “off-site” would be regulated differently, depending on where they are transferred. EPA may propose both approaches for comment under an expedited rulemaking process later this year.

3. Best Available Control Measures for PM-10

The Clean Air Act requires EPA to develop best available control measures (“BACM”) for volatile organic compounds (“VOCs”) and PM-1 O emissions from shipbuilding and repair operations. EPA has now promulgated BACM standards for VOC emissions from ship coating operations, but has not identified standards for PM-1O. The Agency is working on a court-ordered review of the National Ambient Air Quality Standard (“NAAQS”) for PM-1 O and is expected to issue a final decision to retain or revise the PM-1 O standard by June 1997. The Clean Air Science Advisory Committee (“CASAC”) has issued a final staff paper, which recommends retention of the PM-10 standard and adoption of an additional standard regulating particulate 2.5 micrometers or less in diameter. On June 12, 1996, EPA issued an advance notice of proposed rulemaking (“ANPR”), summarizing the CASAC recommendations. Specifically, the ANPR described the recommended revisions to the NAAQS for PM-10 and ozone. It also set forth the Agency’s proposed rulemaking approach to implementing standards and certain strategies for achieving compliance with the revised standards. See 61 Fed. Reg. 29719.

4. Air Emissions Trading: Volatile Organic Compounds

On August 3, 1995, EPA issued a proposed rule to encourage and simplify “open market air emission trading” for “ozone-creating pollutants” (volatile organic compounds and nitrogen oxides). See 60 Fed. Reg. 39668. Shipyards that successfully control these emissions may be able to generate or sell reduction credits. However, under the policy as proposed, credits would not be available for reductions implemented for the purpose of achieving compliance with standards such as Maximum Achievable Control Technology (“MACT”).

5. Flow Control -- Transporting Solid Wastes Over State Lines

There are currently bills in the Senate and the House addressing state authority to enact flow controls. Senate Superfund Subcommittee Chairman, Senator Bob Smith (R-NH), introduced the Senate bill (S. 543) that would give states the authority to restrict the disposal of solid waste from other states in their own landfills. The Supreme Court originally determined that interstate flow controls were unconstitutional because they are an improper restraint on interstate commerce. S. 543 would conflict with this Supreme Court decision, enabling states to implement flow controls and substantially drive up the costs of disposal. The House bill (H.R. 2323), much like the Senate version, is tied up in the House Commerce Committee. Mark-up of the House legislation has yet to occur because debate persists on the terms of the flow control restrictions.

6. Refocus Hazardous Waste Regulation on High Risk Wastes; HWIR

EPA is developing two hazardous waste identification rules (“HWIR”), to allow certain wastes to exit the hazardous waste regulatory scheme under Subtitle C of RCRA. EPA proposed

the risk-based exit criteria for process (or “as generated”) wastes on December 21, 1995 (60 Fed. Reg. 66344) and accepted public comments through April 22, 1996.

A separate proposed HWIR for contaminated media was published on April 29, 1996. See 61 Fed. Reg. 18880. Under the contaminated media rule, EPA proposes to streamline cleanup regulations by delegating authority for most contaminated media -- wastes generated during cleanup actions -- to state agencies. EPA would maintain federal Subtitle C rules for only the riskiest sites. The Agency has outlined two approaches to this regulation -- a “bright line” approach and a “unitary” approach. Public comments for the contaminated media rule will be accepted through July 29, 1996. There is a chance that this deadline will be extended.

7. Cleanup Standards Under CERCLA

CERCLA cleanup levels should not be overly stringent. They should reflect the intended use of the site and nothing more. Currently, many Superfund and industrial sites are cleaned up to levels that far exceed what is necessary for present and future expected uses. Most industrial sites will continue to be used for manufacturing and will have limited public access.

Congress and EPA are reviewing alternatives to reform the cleanup standards under CERCLA to reflect levels that are consistent with the current and future uses of the property. EPA has recently developed and published soil screening guidance, which presents a framework for developing soil screening levels. See 61 Fed. Reg. 27349 (May 31, 1996). The guidance can serve as a tool to expedite the evaluation of contaminated soils at CERCLA sites. It can be used to screen out areas of sites, exposure pathways, or chemicals of concern from further consideration, or determine that further study is warranted at a site.

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8. Pretreatment Program Improvements

EPA has revised the federal pretreatment program requirements to delete many obsolete, outdated and superseded provisions (such as deadlines that have already passed). The Agency is also in the process of streamlining specific requirements, such as procedures for developing and maintaining approved publicly-owned treatment works (“POTWs”) pretreatment programs. NSRP may want to encourage EPA to simplify program implementation for industrial users, especially where requirements do not result in environmental benefits. NSRP may also want to encourage the Agency to streamline procedures for POTWs to review and revise their own pretreatment programs.

9. RCRA Corrective Action

On May 1, 1996, EPA published an advance notice of proposed rulemaking (“ANPR”) concerning the corrective action provisions of RCRA sections 3004(u) and 3008(h). See 61 Fed. Reg. 19432. The ANPR delineates the Agency’s plans for finalizing the RCRA Subpart S corrective action rule, first proposed in 1990, which will set new guidelines for implementing cleanup policies. The 1990 proposed rule was never finalized and, instead, has been used as guidance by states and regional EPA offices. The Agency hopes to make cleanups more consistent, risk-based, and cost-effective, and to give industry more responsibility for meeting cleanup goals.

The ANPR lists issues that EPA will address as the rule is rewritten. EPA requests public comment on these issues. They include: (1) using non-RCRA authorities for corrective action, (2) enhanced flexibility for states, (3) voluntary cleanup policy, (4) RCRA-Superfund consistency,

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(5) the potential use of the American Society for Testing & Materials' "risk-based corrective action standard," (6) the balance between site-specific flexibility and national consistency, and (7) public participation. The deadline for submitting comments on the ANPR is July 30, 1996.

10. Retroactive Liability Under CERCLA

Under CERCLA, a shipyard that has been in operation for several decades could be liable for activities that, when conducted, complied with then-existing environmental requirements. CERCLA is a strict liability statute that, many courts have determined, applies to conduct occurring prior to its enactment in December of 1980. However, a district court in Alabama recently held that CERCLA is not retroactive. United States v. Olin, Civ. No. 95-0526-BH-S (S.D. Ala. May 20, 1996). Further, the court decided that, for contamination in one state alone, the federal government may not have the authority to enforce CERCLA. EPA has publicly stated that it will appeal the decision to the Eleventh Circuit. If upheld on appeal, and certainly in the meantime, could have tremendous repercussions on CERCLA enforcement.

Additionally, proposals are now pending in the House and the Senate to reduce companies' liability for pre-enactment conduct by 50%. The House proposal would, in fact, apply not only to pre-1980 conduct, but also to all conduct occurring before 1987. See Collier, Shannon, Rill & Scott Memorandum to Michael Chee (October 13, 1995).

11. Self-Certification: Project XL

Project XL is a pilot project initiated by EPA which offers facilities the flexibility to implement innovative regulatory approaches. In return for the flexibility, the facilities enter into enforceable commitments to achieve better environmental results than would have been attained

through full compliance with conventional regulatory approaches. The Agency estimates involvement in the Project by a total of 50 entities. EPA is accepting applications on a rolling admission basis. Projects are selected based on the following criteria: (1) environmental results, (2) cost savings and paperwork reduction, (3) stakeholder support, (4) innovative/multi-media prevention, (5) transferability, (6) feasibility, (7) monitoring, reporting, and evaluation, and (8) risk-shifting.

Individual projects might include the creation of industry-wide overall environmental performance objectives and emission reduction targets negotiated by industry and the government. This might be followed by implementation of facility-specific agreements. The goal of Project XL is to encourage environmental compliance strategies that are "cleaner, cheaper, smarter."

12. Amendment of RCRA Cleanup Requirements

Legislative proposals are now before the House and Senate that would eliminate various remedy requirements now imposed by RCRA. One of the most significant changes is that -- under what would be called "Subtitle K" of RCRA -- "remediation wastes" that are managed pursuant to a "Remediation Action Plan" (or "RAP") would not be subject to various RCRA hazardous waste provisions. These provisions include RCRA's land disposal restrictions and related treatment standards, technology standards, and various RCRA permit requirements. Standards related to disposal by underground injection would also be substantially modified with respect to remediation wastes.

13. Risk-Based Approach to PCB Spill Cleanup

Under current EPA regulations, PCB-contaminated articles, soil, and debris that are cleaned up under the authority of the Toxic Substances Control Act (“TSCA”) must generally be incinerated or sent to a chemical waste landfill for disposal. The regulatory status of the contaminated media is determined by the concentration of spilled PCBs, not the concentration of PCBs in the environment. On December 6, 1994, EPA proposed amendments to the PCB rules that would provide more flexibility for PCB cleanups by allowing spills to be handled as remediation wastes and increasing disposal options. See 59 Fed. Reg. 62788. The TSCA reforms have not yet been finalized.

14. Great Lakes Initiative

On March 23, 1995, EPA published final water quality guidance for the Great Lakes system. See 60 Fed. Reg. 15366. The rule limits states’ flexibility in implementing the “guidance” and places onerous demands on industrial dischargers in the region, including the states of New York, Pennsylvania, Ohio, Indiana, Illinois, Minnesota, Wisconsin, and Michigan. EPA has been challenged in court on this rule. Some change is likely.

This initiative is expected to be applied to the Gulf states next and, eventually, to the nation as a whole. Congress is developing legislation that would clarify and simplify the guidance, improve state flexibility to implement alternative “comparable” state programs, and provide other benefits.

15. Brownfield Sites

As of May 1996, 24 states have enacted legislation or implemented administrative reforms designed to encourage the voluntary cleanup and/or development of contaminated industrial sites (or "brownfields"). Many states provide financial or technical assistance of various sorts, and many will apply more lenient cleanup standards to parties who voluntarily undertake the cleanup of these sites. Some form of assurance against liability is provided by eight states.

Over the past year, EPA has introduced several administrative reforms to promote the purchase and development of brownfields sites. The implementation of these reforms is still taking shape. EPA has stated, however, that it will not give any assurances to honor state brownfields protections for liability. A legislative proposal now before the House would require EPA to do so. A Senate proposal would provide substantial funding (up to \$200,000 per site) to promote voluntary redevelopment.

16. Revised Definition of Wetlands

Many shipyards could directly or indirectly affect wetland areas because of shipyards' locations. Therefore, NSRP may wish to become involved in the wetland definition debate to help shape policy on the issue. The current definition of wetlands is from a 1989 Corps of Engineers Manual that uses three broad criteria for determining whether an area qualifies for protection as a wetland. EPA, the Corps, and Congress are currently considering proposals that would change the definition of wetlands and seek to match restrictions on use and destruction of wetlands to the quality of the wetland area. President Clinton has announced his support for a program that would embody a "no net loss" concept.

VI. CONCLUSION

The goal of this project is to focus shipyards' regulatory reform efforts on those environmental issues of greatest concern to the industry. The presidential election year is the opportune time for these efforts to be concerted. Party platforms are being constructed, with regulatory reform a stated priority. Using the questionnaire and its results, NSRP representatives can allocate their resources more efficiently, becoming directly involved in the reform of some regulations or statutes, while leaving others to the efforts of like-minded industry groups and EPA.

Attachments

ATTACHMENT ONE

Collier, Shannon, Rill & Scott

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MEMORANDUM

,January 11, 1996

TO: **SNAME PANEL SP-1**
SHIPYARD REPRESENTATIVES

FROM: **JOHN L. WITTENBORN**

RE: **REGULATORY REFORM QUESTIONNAIRE**

Attached is a memorandum and a questionnaire regarding the Regulatory Reform project which we are handling for NSRP. See Attachment 1. This is being sent only to the 14 shipyard representatives on SP-1 Panel. See Attachment 2. To ensure as broad a perspective as possible. we would like for you to respond personally, or refer the questionnaire to the appropriate person in your company/facility for a response. We have requested responses to be returned by January 31.1996.

If you believe individual facilities may face differing regulatory burdens. it may be appropriate to allow separate responses to be preparedby individual facilities within a company or agency. If this is true for your company or agency, please let me know and we will arrange to distribute additional copies of the memorandum and questionnaire.

January 11.1996

Page 2

We will tabulate your responses and report on the industry's regulatory reform priorities at the next Panel meeting in Colorado. March 6-8. Thanks for your cooperation. Please let me know if you have any questions.

Attachments

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NSRP REGULATORY REFORM QUESTIONNAIRE

I. INTRODUCTION

In the past year and certainly since the elections in November 1994. Congress and the Administration have been working to implement various forms of environmental regulatory reform. Some of these reforms can be attributed to Congressional action and ideologies and some can be attributed to steps the Clinton Administration has taken to try to reduce regulatory burdens. The pendulum has swung and we anticipate that this process will continue at a heated pace throughout this presidential election year. This is the time for industry to take advantage of the political atmosphere to identify regulatory reform targets and streamline environmental protections so that they are logical, efficient, and protective of the significant investments being made.

The shipbuilding industry has an opportunity to participate in this process and attempt to reap benefits for its members. However. the industry cannot realistically seek to change every environmental statute or regulation that affects its members. but must develop a list of priorities and focus its efforts on the highest priorities. We have formulated (and attach hereto) a list of issues that affect the shipbuilding industry in varying degrees. These issues are not ranked in any particular order. That is what we need NSRP members to do.

After reading the abstract for each issue. please indicate how important the issue is to your facility. A response form has been provided to "grade" the issue from 1 (least important) to 5

(most important). By tabulating responses from all NSRP members. we will gain better insight as to where NSRP should concentrate its efforts during this regulatory reform process.

After all of the issues have been ranked. we will discuss with NSRP representatives the best strategy to promote NSRP's interests. Some of the following issues may be resolved to NSRP's liking without a significant investment of resources. either because Congress or EPA have already committed to a certain action or because other industry groups can be relied upon to promote causes that are consistent with NSRP members positions. Other issues will require more direct involvement from NSRP. These are separate questions: level of priority and level of effort. For now. we seek your guidance only on the level of priority.

After completing the questionnaire. please transcribe your responses onto the one-page response form and return it to John L. Wittenborn or Michael Hill, at Collier, Shannon, Rill & Scott. To ensure incorporation of your comments. your response should be received no later than January 31. 1996.

II. ISSUES

A. Clean Water Act

1. Revised Definition of Wetlands

The Clean Water Act gives EPA and the Corps of Engineers jurisdiction over discharges of dredge and fill material into waters of the United States. including wetlands. The current definition of wetlands is from a 1989 Corps of Engineers Manual which uses three broad criteria for determining whether an area qualifies for protection as a wetland. EPA. the Corps and Congress are currently considering proposals which would change the definition of wetlands and seek to match restrictions on use and destruction of wetlands to the quality of the wetland area. Thus, low quality wetlands would not require as much protection or could be destroyed if other wetlands are created in their place. President Clinton has announced his support for a program embodying the "no net loss" concept. Because of their location. most shipyard operations will directly or indirectly impact wetland areas. NSRP members may wish to become involved in the definition debate to help shape the policy on this important issue.

2. Sediment Criteria

In December 1994. EPA proposed new sediment quality criteria and sediment protection policies. The criteria will specify levels of various toxic chemicals which are deemed to interfere. with sediment quality goals. The criteria will affect shipyard operations that disturb sediments or which may contribute to sediment contamination. This means that virtually all stormwater discharges, dredging operations. drydocking and overwater work would be affected. Shipyards may wish to become involved in the development of these sediment criteria to ensure that they are realistic and achievable.

3. Pretreatment Program Improvements

EPA has begun to revise the federal pretreatment program requirements to delete numerous obsolete. outdated. and superseded provisions (mostly to address deadlines that have already passed) and to streamline specific requirements. including procedures for developing and maintaining approved publicly-owned treatment works ("POTW") pretreatment programs. NSRP members may want to identify ways that EPA can (1) reduce requirements that do not result in environmental benefits or that simplify program implementation for industrial users; and (2) streamline procedures for POTWs to review and revise their own pretreatment programs.

4. Great Lakes Initiative

On March 13. 1995. EPA published the final water quality guidance for the Great Lakes system. which limits states flexibility in implementing the "guidance" and places onerous demands on industrial dischargers in the region. including the following eight states -- New York. Pennsylvania Ohio. Indiana Illinois, Minnesota,sconsin, and Michigan. These states are required to issue rules within the next two years that are at least as protective of water quality as the EPA guidance.

This initiative is expected to be applied next to the Gulf states and, ultimately, nationwide. Congress is working on legislation that would clarifynd simplfyhe guidance. improve state flexibility to implement alternative "comparable" state programs. and provide other benefits. The Great Lakes Water Quality Coalition and many other industrial groups (including the National Association of Manufacturers ("NAM")) have devoted substantial resources to reducing the impact of the Great Lakes Initiative. NSRP members may want to monitor these activities or participate in the Great Lakes issues before Congress and at EPA. This issue is by no means a "past" issue. EPA has been challenged in court on its final rule. and changes of one kind or another appear inevitable.

5. Storm Water

The Clean Water Act requires facilities with storm water discharges “associated with industrial activity” from a point source to a water of the United States to obtain a NPDES permit. for such discharges. This includes shipyard facilities. EPA administers the NPDES program in 11 states.¹ the District of Columbia and Puerto Rico. The 39 other states (referred to as “delegated” states) administer their own programs. based on EPA’s program. There are two permitting options in all of these jurisdictions -- individual or general permits.

Last fall. EPA promulgated its “multi-sector” general permit. covering 29 industry sectors. including the ship and boat building and repair sector. See 60 Fed. Reg. 50804 (Sept. 29, 1995). Facilities in the non-delegated states may now choose between an individual permit and either of two general permits: the baseline general permit (which EPA promulgated in 1992) and the new multi-sector permit. Most of the delegated states provide their own individual or general permit options. although some are anticipated to promulgate a multi-sector permit that is similar to EPA’s. Under the EPA program. facilities in the non-delegated states face deadlines of March 29. 1996 to submit a Notice Of Intent to apply for EPA’s multi-sector permit. and September 25. 1996 to prepare and implement a stormwater pollution prevention plan.

Finally, EPA and Congress are contemplating making further changes to the storm water program. EPA has established a Federal Advisory Committee (of which CSR&S is a member) to recommend administrative improvements. mostly to provide incentives for pollution prevention within the current statutory framework (such as providing certain permitting exemptions). Statutory changes contemplated by Congress include requiring states to develop their own storm water programs. These state programs would not have to rely on permits and would also provide businesses with incentives to conduct pollution prevention.

6. Effluent Limits For Metal Products And Machinery ("MP&M") Industries

EPA has proposed stringent wastewater effluent limits for manufacturers in the metal products and machinery (“MP&M”) industries. 60 Fed. Reg. 28209 (May 30. 1995). This proposal affects all “Phase I” MP&M industries. Shipyards have been identified as “Phase II” MP&M facilities. The proposed MP&M regulations for Phase II are scheduled to be released within the next three years; however. the Phase I effluent limitations will

¹/ These “non-delegated” states include Alaska Arizona, Florida Idaho, Louisiana, Maine, Massachusetts. New Hampshire. New Mexico. Oklahoma and Texas.

serve as a basis for Phase II. Also, there are reports (but no confirmation) that EPA will combine Phase I and Phase II in one comprehensive rulemaking to be issued in late 1996 or early 1997.

The Phase I proposed effluent limitations and standards would control conventional, priority, and non-conventional pollutants at both existing and new facilities that discharge either directly to surface waters or indirectly to publicly-owned treatment works ("POTWs"). Thus, the proposed effluent limitations would remove the existing advantage (in the form of less stringent effluent standards) for facilities that discharge to a POTW. This would be contrary to past EPA policies that many facilities may have relied upon.

EPA proposes establishing stringent concentration-based limits for oil and grease, aluminum, cadmium, chromium, copper, iron, nickel, zinc, cyanide, total suspended solids ("TSS"), and pH that reflect the Best Practicable Technology ("BPT"). Many existing facilities would not be able to meet the new limits for these pollutant parameters without significant capital expenditures.

7. NPDES Permit Monitoring

The current NPDES requirements have been interpreted by some permit writers to require permittees to monitor for all effluent guideline-listed pollutants. This could include numerous constituents identified in the effluent guidelines background documents for shipyard operations that are not currently subject to permit limitations and/or monitoring and reporting requirements. Please state whether this has been an issue with your facility and whether you believe the NSRP should promote guidance regarding the appropriate scope of compliance monitoring for shipyards subject to NPDES permits.

B. Clean Air Act

1. Air Emissions Trading: Volatile Organic Compounds

On August 3, 1995 EPA issued a proposed rule to encourage and simplify "open market air emission trading" for "ozone creating pollutants" (volatile organic compounds and nitrogen oxides). Shipyards who successfully control these emissions may be able to generate or sell reduction credits. However, under the policy as proposed, credits would not be available for reductions implemented for the purpose of achieving compliance with standards such as Maximum Achievable Control Technology ("MACT"). Please consider whether NSRP should seek to expand the availability of emission reduction credits based upon compliance with MACT.

2. [CAA Title V Operating Permits Program](#)

CAA Title V and EPA's Part 70 regulations require major sources of regulated air pollutants to obtain a federal operating permit. The Part 70 regulations: (1) require costly data collection and paperwork burdens; (2) create extensive delays in obtaining the initial permit and permit modifications; and (3) unnecessarily duplicate existing state requirements. NSRP members may want to encourage EPA, and if necessary seek Congressional support to develop a simple program that allows for more operational flexibility and consolidates the Title V operating permit with existing federal and state construction permit programs.

3. [Best Available Control Measures for PM-10](#)

The Clean Air Act requires EPA to develop best available control measures ("BACM") for volatile organic compounds ("VOC") and PM-10 emissions from shipbuilding and repair operations. EPA has now promulgated BACM standards for VOC emissions from ship coating operations, but has not identified standards for PM-10. Without federal guidance, states are forced to develop individual definitions of BACM or reasonable available control technology ("RACT") applicable to shipyard facilities in areas that are not in compliance with National Ambient Air Quality Standards for PM-10. This problem will become especially acute when EPA completes work on a court ordered review of the PM-10 standard. Shipyards may wish to work with EPA in developing BACM level controls on PM-10 emissions from shipyard operations that will result in an achievable and level playing field for all affected facilities.

4. [Major Source Determinations Based Upon "Potential to Emit"](#)

Section 112(a)(1) of the Clean Air Act defines a major source as a source that "emits or has the potential to emit considering controls" above the threshold amount of particular air pollutants. EPA defines "potential to emit" based on the maximum capacity of the source's operational equipment. Physical and operational limitations are only considered to the extent they are "federally enforceable."

The U.S. Court of Appeals for the District of Columbia Circuit recently remanded EPA's rule mandating "federally enforceability" under "potential to emit." The remand may allow NSRP members to use state and local limitations to calculate "potential to emit" to avoid becoming major sources. EPA must respond to the court remand with a rulemaking that will affect a facility's calculation of "potential to emit." Although NSRP is not a party to the litigation, it can seek to influence the EPA response through comment.

C. CERCLA/RCRA

1. Eliminate Retroactive Liability Under CERCLA

Some NSRP member companies have owned and operated their shipyards for several decades. Those companies operated in compliance with then-existing environmental requirements, but because CERCLA is a strict liability statute and has since its enactment in 1980 been applied even to pre-enactment conduct, many companies face liabilities for such conduct.

Proposals are now pending in the House and the Senate to reduce companies' liability for pre-enactment conduct by 50%. The House proposal would, in fact, apply not just to pre-1980 conduct, but to all pre-1987 conduct. See October 13, 1995 memorandum to Michael Chee.

Many industries already are active in related lobbying campaigns for proposed changes to Superfund. NSRP may want to monitor these activities or get involved in repealing retroactive liability under Superfund.

2. Change Cleanup Standards Under CERCLA

Many Superfund and industrial sites are cleaned up to levels that go beyond what is necessary for their present and future expected uses.. In many cases, industrial sites will continue to be used for manufacturing and will have limited public access. Cleanup levels should reflect the intended use for the property and not be overly stringent.

Congress and EPA are reviewing alternatives to reform the cleanup standards under CERCLA to reflect levels that are consistent with the use to which the property will be put. NSRP may want to monitor these activities or get involved in reforming CERCLA cleanup standards.

3. Refocus Hazardous Waste Regulation On High Risk Wastes: HWIR

Certain regulations now require that all hazardous waste meet the same management standards. However, there is no correlation between the standards and the nature or degree of risk posed by the particular waste. The proposed "refocus" intends to target private industry and government resources toward higher-risk wastes.

To refocus, EPA is developing two hazardous waste identification rules ("HWIR"), to allow certain low-risk listed hazardous wastes to exit the hazardous waste regulatory scheme. EPA has already proposed new risk-based exit criteria for process ("as generated") wastes. A separate proposed rule for contaminated" media (e.g., soil, groundwater, sediment etc.) is

expected in early 1996. Please rate the significance of the HWIR to NSRP members.

4 . RCRA Corrective Action

EPA is expected soon to propose new regulations implementing the corrective action provisions of RCRA sections 3004(u) and 3008(h). These regulations will set forth the obligation of facilities which actually manage hazardous waste or which previously managed hazardous waste to identify, investigate and remediate releases of hazardous constituents throughout the facility. Critical issues remaining unresolved include (1) establishment of a compliance point for groundwater protection standards: (2) the use of risk assessment to determine groundwater and soil cleanup levels: and (3) financial assurance for closure and post-closure care. Shipyards subject to corrective action will be significantly affected by this rule.

5. Redefinition of Solid Waste

Current EPA regulations allow some recycling operations to escape RCRA regulation altogether. Other common recycling activities are defined as waste treatment per se or may otherwise require waste storage permits. Such activities are subject to the fill panoply of RCRA Subtitle C requirements. For several years. EPA has been working with the selected stakeholders to develop a new definition of solid waste which addresses recycling activities involving hazardous wastes. The impact of the proposed redefinition of solid waste is uncertain. EPA may seek to expand its jurisdiction over recycling activities so that current recycling exemptions may be lost. On the other hand. EPA may impose requirements on recycling activities that are less burdensome than current RCRA requirements. Shipyards that manage hazardous wastes or purchase products manufactured from hazardous waste ingredients will be interest in participating in this definition process to ensure that recycling practices are not excessively regulated.

6. Amendment Of RCRA Cleanup Requirements.

Related to the CERCLA remedy selection provisions described above, legislative proposals now before the House and Senate would eliminate various remedy requirements now imposed by RCIW. Perhaps the most important of these changes is that -- under what would be called "Subtitle K" of RCRA -- "remediation wastes" that are managed pursuant to a "Remediation Action Plan" (or "RAP") (defined to include orders, permits, and enforceable agreements or plans approved by EPA or a state counterpart) would not be subject to various RCRA hazardous waste provisions. These provisions include RCRA's land disposal restrictions and related treatment standards, technology standards, and various RCRA permit requirements. Standards related to disposal by underground

injection would also be substantially modified with respect to remediation wastes.

7 Brownfield Sites

Twenty-three states have recently implemented programs to encourage the cleanup and/or development of contaminated sites (or "brownfields"). Many states provide financial or technical assistance of various sorts. and many will apply more lenient cleanup standards to parties who voluntarily undertake the cleanup of these sites. Seven states provide assurances in some form against liability.

Although EPA has recently made some efforts administratively to promote the purchase and development of Brownfields sites.. those efforts are fairly weak. For example, EPA has given no assurances that it will honor state brownfields assurances. A proposal now before the House would require EPA to do so. A Senate proposal would provide substantial funding (up to \$200.000 per site) to promote voluntary redevelopment.

The brownfields issue could be relevant to shipyards who (1) want to expand their operations and are considering doing so through the purchase of land that is contaminated. or (2) want to obtain more lenient cleanup standards and other advantages for land they already own and want to clean up voluntarily.

D. Miscellaneous

1. Flow Control -- Transporting Solid Wastes Over State Lines

S. 543. introduced by Senate Superfund Subcommittee Chairman Senator Bob Smith (R-NH), would give states the authority to restrict the disposal of solid waste from other states in their own landfills. Interstate flow controls were originally found to be unconstitutional as an improper restraint on interstate commerce. S. 543 would enable states to implement flow controls and substantially "drive up" the costs of disposal. Because shipyards can generate significant amounts of solid waste. NSRP members may wish to express opposition to flow controls.

2. Environmental Audit Privilege and Disclosure Incentives

Although EPA encourages companies to conduct voluntary environmental compliance audits. its present policy fails to provide adequate protection against the use of audit reports in enforcement actions. citizen suits or third-party tort actions. The new EPA policy (issued December 22, 1995), grants relief from the gravity-based civil penalty component. but offers no relief with respect to the "economic benefit" component. The policy is not binding on states or private litigants and requires compliance with several

conditions before penalty mitigation is available. Several states independently have adopted statutes that provide for fully privileged environmental audits, but the state laws cannot prevent discovery or review by EPA. Congress is considering audit legislation now. NSRP members may want to provide assistance to its members to work with their state legislatures to approve an environmental audit privilege and work with Congress to develop a national audit privilege.

3. Risk-Based Approach to PCB Spill Cleanup

Under current EPA regulations, PCB contaminated articles, soil and debris which are cleaned up under the authority of the Toxic Substances Control Act (“TSCA”) must generally be incinerated or sent to a chemical waste landfill for disposal. The regulatory status of the contaminated media is determined by the concentration of PCBs which were spilled, not the concentration of PCBs in the environment. Last year, EPA proposed amendments to the PCB rules which would provide more flexibility for PCB cleanups by allowing spills to be handled as remediation wastes and increasing disposal options. Shipyards with residual PCB contamination in soil or sediments will wish to encourage EPA to finalize the proposed TSCA reforms.

4. Self-Certification: Project XL

EPA is soliciting proposals from industries interested in participating in a pilot project called Project XL, and last month announced the first 8 individual projects (out of an anticipated total of 50). Project XL would require industries, through their associations, to propose ways to reduce burdens of piecemeal environmental regulations. Individual projects might include the creation of industry-wide overall environmental performance objectives and emission reduction targets negotiated by the trade association and the government. This may be followed by implementation of facility-specific agreements. The goal of the project is to create “cleaner, cheaper, [and] smarter” environmental compliance strategies. NSRP should consider the potential benefits of this program and whether individual members, [or possibly the NSRP as a whole], should participate.

5. Harmonize Federal Reporting Requirements

Shipyards are now subject to duplicative and burdensome discharge or release reporting and emergency planning requirements under existing regulations promulgated under Emergency Planning and Community Right-To-Know Act (EPCRA) [§ 304], the CAA, the CWA and RCRA. To replace the multitude of reporting forms required for each of the different discharges from a single facility, EPA has proposed to create a one-stop reporting system for the collection of routine emissions data. EPA’s Executive Steering Committee is reviewing various options and is expected

soon to make recommendations for fiscal years 1996 and 1997. In particular, it is hoped that EPA will reduce the excessive reporting obligations imposed under EPCRA by listing only specific chemicals that exhibit toxic characteristics instead of overbroad categories of chemicals. NSRP members may want to get involved in this attempt to harmonize federal reporting requirements.

6. Reduce Scope of EPCRA Section 313

EPA is also in the process of a three step expansion of EPCRA Section 313. Last fall the Agency doubled the list of toxic chemicals subject to reporting. Currently, EPA is working on expanding the number of facilities subject to the law and adding chemical use reporting obligations. The chemical use reports would compel disclosure of information on manufacturing processes using a materials accounting, or mass balance approach, NSRP may want to monitor or seek to influence these efforts. This may involve EPA and Congressional initiatives.

CONCLUSION

Thank you for your input on issues that affect the NSRP members. If we have missed any issues that you feel are important and should be considered please list them below or on a separate page and provide a brief explanation of their effect on your facility. Your input is extremely valuable in guiding our activities to make regulatory burdens on the industry as efficient as possible.

*

*

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If you have any questions, please call John Wittenborn or Mike Hill at 202-342-8400. The attached response form should be faxed c/o John Wittenborn (202-338-5534) by January 31, 1996.

Attachment

NSRP REGULATORY REFORM QUESTIONNAIRE

Your Name: _____

RESPONSE FORM

Your Company: _____

ISSUES	(1) least important	(2)	(3)	(4)	(5) most important
A. <u>Clean Water Act</u>					
1. Revised Definition of Wetlands					
2. Sediment Criteria					
3. Pretreatment Program Improvements					
4. Great Lakes Initiative					
5. Storm Water					
6. Effluent Limits for Metal Products and Machinery ("MP&M" Industries)					
7. NPDES Permit Monitoring					
B. <u>Clean Air Act</u>					
1. Air Emissions Trading: Volatile Organic Compounds					
2. CAA Title V Operating Permits Program					
3. Best Available Control Measures for PM-10					
4. Major Source Determinations Based Upon "Potential To Emit"					
C. <u>CERCLA/RCRA</u>					
1. Eliminate Retroactive Liability Under CERCLA	I	I			
2. Change Cleanup Standards Under CERCLA	I				
3. Refocus Hazardous Waste Regulation On High Risk Wastes HWIR	I				
4. RCRA Corrective Action					
5. Redefinition of Solid Waste					
6. Amendments of RCRA Cleanup Requirements					
7. Brownfield Sites					
D. <u>Miscellaneous</u>					
1. Flow Control - Transporting Solid Wastes Over State Lines	I				
2. Environmental Audit Privilege and Disclosure Incentives	I	I			
3. Risk-Based Approach to PCB Spill Cleanup	I	I	I	I	
4. Self-Certification: Project XL	I	I	I	I	
5. Harmonize Federal Reporting Requirements	I	I	I	I	I
6. Reduce Scope of EPCRA Section 313	I	I	I	I	I

Please fax your response to John Wittenborn at Collier, Shannon, Rill & Scott at (202) 338-5S34 no later than January 31, 1996.

ATTACHMENT TWO

**NSRP REGULATORY REFORM SURVEY RESULTS
PRIORITY ISSUES**

	ISSUES	Ranking. By Total Score	Ranking By % 4 & 5
A.7	NPDES Monitoring	1	1
B.2	CAA Title V Operating Permit Program	1	3
A.6.	Effluent Limits for Metal Products and Machinery	2	3
A.5.	Storm Water	3	3
D.6.	Reduce Scope of EPCRA Section 313	4	2
D.2.	Environmental Audit Privilege and Disclosure Incentive	5	4
D.4.	Harmonize Federal Reporting Requirements	5	4
A.2.	Sediment Criteria	6	4
B.4.	Major Source Determination Based Upon "Potential to Emit"	7	5
C.5.	Redefinition of Solid Waste	8	5
B.3.	Best Available Control Measures for PM-10	9	5
B.1.	Air Emissions Trading: VOCs	10	6
D.1.	Flow Control-- Transporting Waste Over State Lines	10	8
C.3.	Refocus Hazardous Waste Regulation On High Risk Wastes; HWIR	11	7
C.2.	Change Cleanup Standards Under CERCLA	12	7
A.3.	Pretreatment Program Improvements	13	8
C.4.	RCRA Corrective Action	13	9
C1.	Eliminate Retroactive Liability Under CERCLA	14	8
D.4.	Self-Certification: Project XL	15	10
C.6.	Amendments of RCRA Cleanup Requirements	15	10
D.3.	Risk-Based Approach to PCB Spill Cleanup	16	12

A.4.	Great Lakes Initiative	17	11
C.7.	Brownfield Sites	17	11
A1.	Revised Definition of Wetlands	17	7

NSRP REGULATORY REFORM SURVEY RESULTS

ISSUES	Total Score	% 4 & 5
A. CLEAN WATER ACT		
1. Revised Definition of Wetlands	30	7
2. Sediment Criteria	55	71
3. Pretreatment Program Improvements	43	43
4. Great Lakes Initiative	30	14
5. Storm Water	58	78
6. Effluent Limits for Metal Products and Machinery	59	78
7. NPDES Monitoring	63	93
.		
B. CLEAN AIR ACT		
1. Air Emissions Trading: VOCs	48	57
2. CAA Title V Operating Permits Program	63	78
3. Best Available Control Measures for PM-10	52	64
4. Major Source Determination Based Upon "Potential to Emit"	54	64
.		
C. CERCLA		
1. Eliminate Retroactive Liability Under CERCLA	41	43
2. Change Cleanup Standards Under CERCLA	45	50
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ATTACHMENT THREE

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